

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4795 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and

MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

FOOD CORPORATION OF INDIA

Versus

VIRAMGAM NAGAR PALIKA

Appearance:

MR NAVIN PAHWA, for M/S THAKKAR ASSOC. for Petitioner
MR AJ PATEL with MB FAROOQUI for Respondent No. 1
MR UDAY R. BHATT, AGP for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE M.R.CALLA and

MISS JUSTICE R.M.DOSHIT

Date of decision: 29/09/98

ORAL JUDGEMENT (per M.R.Callla, J.)

There is no dispute between the parties that an amount of Rs.23,93,500/- was paid to the respondent

Viramgam Nagar Palika by the petitioner Food Corporation of India (FCI). There is no dispute that the godowns of the FCI are not situated in the municipal limits of Viramgam Nagar Palika. The case of the FCI is that this amount was paid to the Viramgam Nagar Palika under a mistaken belief that the Nagar Palika was entitled to the same, but when it was revealed that the godowns of FCI are not situated in the municipal limits of Viramgam Nagar Palika and, therefore, the Nagar Palika was not entitled to take this amount from FCI as property tax, it asked for the refund of the same. However, the respondent Viramgam Nagar Palika declined to make the refund. The FCI ultimately filed an appeal before the Collector, Ahmedabad, under Section 258 of the Gujarat Municipalities Act, 1963. The Collector has passed the order dated 29th March 1997 holding that the godowns of the FCI were beyond the municipal limits of Viramgam Nagar Palika and yet the amount of Rs.23,62,500/- was charged by the Nagar Palika from the FCI, but he has rejected the appeal on the ground that, whereas the amount had already been paid and deposited, no order could be passed under Section 258 of the Act directing the Nagar Palika to refund the amount so as to restore the status-quo ante. According to the Collector, Ahmedabad, who has passed the impugned order dated 29th March 1997, Section 258 of the Act could not be invoked in the facts and circumstances of this case.

2. The dispute between the Nagar Palika and the FCI was sought to be resolved by way of some re-conciliation and for that purpose, some proceedings were drawn on 15th April 1998. Copies of such proceedings were sent to the Director of Municipalities, State of Gujarat, Ahmedabad, Senior Manager of FCI and the Chief Officer of the Viramgam Nagar Palika. To these proceedings dated 15th April 1998, the Director of Municipalities, State of Gujarat, Senior Regional Manager, FCI, Mamlatdar and Deputy Mamlatdar of the Collectorate, Ahmedabad, the representative of the Viramgam Nagar Palika, the Assistant Manager (Finance), FCI, and District Manager (Marketing), FCI, were parties. However, nothing was done on the basis of these proceedings dated 15th April 1998 whereby the FCI had shown its willingness to compensate the Nagar Palika for any damage caused to the roads on account of the movement of the vehicles of FCI and the Viramgam Nagar Palika had agreed to hold the meeting of the Board on the question of the refund of the amount of Rs.23,92,500/- which had been deposited by the FCI with the Nagar Palika. The Viramgam Nagar Palika did not hold any meeting of the Board to consider the question of refund on the basis of these conciliation

proceedings dated 15th April 1998 and therefore, there is no question of paying any compensation by the FCI for the damage said to have been caused to the roads on account of the movement of the FCI vehicles. In the form of pleadings before this Court in this Special Civil Application, very serious allegations have been levelled by the FCI against the elected members of the Viramgam Nagar Palika and its officials in the matter of forging certain records on the letter heads of FCI and it was also pointed out by Mr.Pahwa that in this regard, the FCI had also lodged a criminal case with the police and the Collector had also issued certain directions to make a probe in to the alleged forgery. It is given out by Mr.A.J.Patel that the chargesheet has already been filed by the police against Messrs Sureshchandra Navinchandra Thakkar, Vice President of the Nagar Palika, Kaushikkumar Sakarchand Patel, Chief Officer of the Nagar Palika, Dhirendra Vithalbhai of Ganesh Corporation and Arvindbhai C. Shah, Incharge Auditor of Nagar Palika, under Sections 420, 406, 409, 467, 468, 471 read with Sections 114 and 120-B of IPC. We would have taken a very serious view of the matter because, on the basis of the alleged forged documents, the pleadings were raised in this matter and the petition was sought to be dismissed by constructing a case in favour of the Nagar Palika on the basis of such spurious documents, but now that the chargesheet has been filed and the offences are to be tried before the concerned Court, we do not consider it advisable to make any observations in this regard.

3. Be that as it may, the present petition is directed against the order dated 29th March 1997 passed by the District Collector, Ahmedabad, and who has rejected the FCI's appeal on the sole ground that it was not at all a case for invoking Section 258 of the Act for the purpose of directing the Nagar Palika to refund the amount so as to restore the status-quo ante. Mr. Pahwa has placed strong reliance on a Full Bench decision of this Court, in the case of PARSHOTAMBHAI G. CHAVDA v. STATE OF GUJARAT, reported in 1998 (1) GLH 519, decided on 30th March 1998. The Full Bench has considered the scope of Section 258 of the Act and has held in no uncertain terms that, power of the Collector to suspend the resolution passed by the Municipality is not limited to resolution which is not implemented, but the Collector can suspend the resolution which has been implemented and he may also direct the restoration of the position ante. The Full Bench has also overruled the earlier decision of this Court in the case of H.H.PARMAR v. COLLECTOR, RAJKOT, reported in 1979 (20) (2) GLR 97. It is, therefore, settled by the Full Bench decision of this

Court that under Section 258, the Collector has the power to undo the resolution which has already been implemented and while doing so, he can also direct the restoration of the position ante. This decision of the Full Bench was rendered on 30th March 1998 and the same was not available on the date when the Collector passed the order on 29th March 1997. In any case, as the legal position stands now, the order dated 29th March 1997 which is impugned in this Special Civil Application, cannot be sustained in so far as it seeks to reject the FCI's appeal under Section 258 of the Act on the ground that Section 258 could not be invoked by FCI so as to direct the restoration of the payment. The order dated 29th March 1997 passed by the Collector, Ahmedabad, is therefore, quashed and in the facts and circumstances of this case, we direct the Collector to exercise his powers under Section 258 of the Gujarat Municipalities Act in light of the Full Bench decision rendered by this Court on 30th March 1998 and pass such orders in accordance with law as it deemed fit, after hearing both the sides on the question of the refund of the amount of Rs.23,92,500/- to the FCI. The Collector shall pass such orders in accordance with law within a period of two months from the date the certified copy of this order is served upon the Collector concerned. For this purpose, the Collector need not give any notice afresh to secure the presence of both the sides because, it is agreed by Mr.Pahwa on behalf of the FCI and Mr.A.J.Patel on behalf of the Viramgam Nagar Palika under instructions from the Chief Officer of the Nagar Palika, Mr.Kaushik Patel, who is present in the Court that they would remain present before the Collector, Ahmedabad, on 12th October 1998. The Collector, Ahmedabad would be at liberty to fix any other date on 12th October 1998 if the same is not convenient to him. This Special Civil Application is allowed in terms as aforesaid and the Rule is made absolute accordingly. No order as to costs.

sreeram.